

SENATE, No. 424

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator DIANE B. ALLEN

District 7 (Burlington)

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

SYNOPSIS

Expands civil rights protections to include pregnancy and breast-feeding; requires employers to provide daily break to breast-feeding mothers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning pregnancy and breast-feeding in the workplace,
2 amending P.L.1945, c.169 and supplementing chapter 2 of Title
3 34 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
9 read as follows:

10 11. It shall be an unlawful employment practice, or, as the case
11 may be, an unlawful discrimination:

12 a. For an employer, because of the race, creed, color, national
13 origin, ancestry, age, marital status, civil union status, domestic
14 partnership status, affectional or sexual orientation, genetic
15 information, sex, gender identity or expression, disability or
16 atypical hereditary cellular or blood trait of any individual, or
17 because of the liability for service in the Armed Forces of the
18 United States or the nationality of any individual, or because of the
19 refusal to submit to a genetic test or make available the results of a
20 genetic test to an employer, or on the basis of pregnancy, childbirth,
21 breast-feeding or expressing milk or related medical conditions, to
22 refuse to hire or employ or to bar or to discharge or require to retire,
23 unless justified by lawful considerations other than age, from
24 employment such individual or to discriminate against such
25 individual in compensation or in terms, conditions or privileges of
26 employment; provided, however, it shall not be an unlawful
27 employment practice to refuse to accept for employment an
28 applicant who has received a notice of induction or orders to report
29 for active duty in the armed forces; provided further that nothing
30 herein contained shall be construed to bar an employer from
31 refusing to accept for employment any person on the basis of sex in
32 those certain circumstances where sex is a bona fide occupational
33 qualification, reasonably necessary to the normal operation of the
34 particular business or enterprise; provided further that nothing
35 herein contained shall be construed to bar an employer from
36 refusing to accept for employment or to promote any person over 70
37 years of age; provided further that it shall not be an unlawful
38 employment practice for a club exclusively social or fraternal to use
39 club membership as a uniform qualification for employment, or for
40 a religious association or organization to utilize religious affiliation
41 as a uniform qualification in the employment of clergy, religious
42 teachers or other employees engaged in the religious activities of
43 the association or organization, or in following the tenets of its
44 religion in establishing and utilizing criteria for employment of an

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 employee; provided further, that it shall not be an unlawful
2 employment practice to require the retirement of any employee
3 who, for the two-year period immediately before retirement, is
4 employed in a bona fide executive or a high policy-making position,
5 if that employee is entitled to an immediate non-forfeitable annual
6 retirement benefit from a pension, profit sharing, savings or
7 deferred retirement plan, or any combination of those plans, of the
8 employer of that employee which equals in the aggregate at least
9 \$27,000.00; and provided further that an employer may restrict
10 employment to citizens of the United States where such restriction
11 is required by federal law or is otherwise necessary to protect the
12 national interest.

13 The provisions of subsections a. and b. of section 57 of
14 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
15 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
16 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

17 For the purposes of this subsection, a "bona fide executive" is a
18 top level employee who exercises substantial executive authority
19 over a significant number of employees and a large volume of
20 business. A "high policy-making position" is a position in which a
21 person plays a significant role in developing policy and in
22 recommending the implementation thereof.

23 b. For a labor organization, because of the race, creed, color,
24 national origin, ancestry, age, marital status, civil union status,
25 domestic partnership status, affectional or sexual orientation,
26 gender identity or expression, disability or sex of any individual, or
27 because of the liability for service in the Armed Forces of the
28 United States or nationality of any individual, or on the basis of
29 pregnancy, childbirth, breast-feeding or expressing milk or related
30 medical conditions, to exclude or to expel from its membership
31 such individual or to discriminate in any way against any of its
32 members, against any applicant for, or individual included in, any
33 apprentice or other training program or against any employer or any
34 individual employed by an employer; provided, however, that
35 nothing herein contained shall be construed to bar a labor
36 organization from excluding from its apprentice or other training
37 programs any person on the basis of sex in those certain
38 circumstances where sex is a bona fide occupational qualification
39 reasonably necessary to the normal operation of the particular
40 apprentice or other training program.

41 c. For any employer or employment agency to print or circulate
42 or cause to be printed or circulated any statement, advertisement or
43 publication, or to use any form of application for employment, or to
44 make an inquiry in connection with prospective employment, which
45 expresses, directly or indirectly, any limitation, specification or
46 discrimination as to race, creed, color, national origin, ancestry,
47 age, marital status, civil union status, domestic partnership status,
48 affectional or sexual orientation, gender identity or expression,

1 disability, nationality or sex or liability of any applicant for
2 employment for service in the Armed Forces of the United States,
3 or on the basis of pregnancy, childbirth, breast-feeding or
4 expressing milk or related medical conditions, or any intent to make
5 any such limitation, specification or discrimination, unless based
6 upon a bona fide occupational qualification.

7 d. For any person to take reprisals against any person because
8 that person has opposed any practices or acts forbidden under this
9 act or because that person has filed a complaint, testified or assisted
10 in any proceeding under this act or to coerce, intimidate, threaten or
11 interfere with any person in the exercise or enjoyment of, or on
12 account of that person having aided or encouraged any other person
13 in the exercise or enjoyment of, any right granted or protected by
14 this act.

15 e. For any person, whether an employer or an employee or not,
16 to aid, abet, incite, compel or coerce the doing of any of the acts
17 forbidden under this act, or to attempt to do so.

18 f. (1) For any owner, lessee, proprietor, manager,
19 superintendent, agent, or employee of any place of public
20 accommodation directly or indirectly to refuse, withhold from or
21 deny to any person any of the accommodations, advantages,
22 facilities or privileges thereof, or to discriminate against any person
23 in the furnishing thereof, or directly or indirectly to publish,
24 circulate, issue, display, post or mail any written or printed
25 communication, notice, or advertisement to the effect that any of
26 the accommodations, advantages, facilities, or privileges of any
27 such place will be refused, withheld from, or denied to any person
28 on account of the race, creed, color, national origin, ancestry,
29 marital status, civil union status, domestic partnership status, sex,
30 gender identity or expression, affectional or sexual orientation,
31 disability or nationality of such person, or that the patronage or
32 custom thereof of any person of any particular race, creed, color,
33 national origin, ancestry, marital status, civil union status, domestic
34 partnership status, sex, gender identity or expression, affectional or
35 sexual orientation, disability or nationality is unwelcome,
36 objectionable or not acceptable, desired or solicited, and the
37 production of any such written or printed communication, notice or
38 advertisement, purporting to relate to any such place and to be made
39 by any owner, lessee, proprietor, superintendent or manager thereof,
40 shall be presumptive evidence in any action that the same was
41 authorized by such person; provided, however, that nothing
42 contained herein shall be construed to bar any place of public
43 accommodation which is in its nature reasonably restricted
44 exclusively to individuals of one sex, and which shall include but
45 not be limited to any summer camp, day camp, or resort camp,
46 bathhouse, dressing room, swimming pool, gymnasium, comfort
47 station, dispensary, clinic or hospital, or school or educational
48 institution which is restricted exclusively to individuals of one sex,

1 provided individuals shall be admitted based on their gender
2 identity or expression, from refusing, withholding from or denying
3 to any individual of the opposite sex any of the accommodations,
4 advantages, facilities or privileges thereof on the basis of sex;
5 provided further, that the foregoing limitation shall not apply to any
6 restaurant as defined in R.S.33:1-1 or place where alcoholic
7 beverages are served.

8 (2) Notwithstanding the definition of "a place of public
9 accommodation" as set forth in subsection l. of section 5 of
10 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
11 manager, superintendent, agent, or employee of any private club or
12 association to directly or indirectly refuse, withhold from or deny to
13 any individual who has been accepted as a club member and has
14 contracted for or is otherwise entitled to full club membership any
15 of the accommodations, advantages, facilities or privileges thereof,
16 or to discriminate against any member in the furnishing thereof on
17 account of the race, creed, color, national origin, ancestry, marital
18 status, civil union status, domestic partnership status, sex, gender
19 identity, or expression, affectional or sexual orientation, disability
20 or nationality of such person.

21 In addition to the penalties otherwise provided for a violation of
22 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
23 of subsection f. of this section is the holder of an alcoholic beverage
24 license issued under the provisions of R.S.33:1-12 for that private
25 club or association, the matter shall be referred to the Director of
26 the Division of Alcoholic Beverage Control who shall impose an
27 appropriate penalty in accordance with the procedures set forth in
28 R.S.33:1-31.

29 g. For any person, including but not limited to, any owner,
30 lessee, sublessee, assignee or managing agent of, or other person
31 having the right of ownership or possession of or the right to sell,
32 rent, lease, assign, or sublease any real property or part or portion
33 thereof, or any agent or employee of any of these:

34 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
35 to deny to or withhold from any person or group of persons any real
36 property or part or portion thereof because of race, creed, color,
37 national origin, ancestry, marital status, civil union status, domestic
38 partnership status, sex, gender identity or expression, affectional or
39 sexual orientation, familial status, disability, nationality, or source
40 of lawful income used for rental or mortgage payments;

41 (2) To discriminate against any person or group of persons
42 because of race, creed, color, national origin, ancestry, marital
43 status, civil union status, domestic partnership status, sex, gender
44 identity or expression, affectional or sexual orientation, familial
45 status, disability, nationality or source of lawful income used for
46 rental or mortgage payments in the terms, conditions or privileges
47 of the sale, rental or lease of any real property or part or portion

1 thereof or in the furnishing of facilities or services in connection
2 therewith;

3 (3) To print, publish, circulate, issue, display, post or mail, or
4 cause to be printed, published, circulated, issued, displayed, posted
5 or mailed any statement, advertisement, publication or sign, or to
6 use any form of application for the purchase, rental, lease,
7 assignment or sublease of any real property or part or portion
8 thereof, or to make any record or inquiry in connection with the
9 prospective purchase, rental, lease, assignment, or sublease of any
10 real property, or part or portion thereof which expresses, directly or
11 indirectly, any limitation, specification or discrimination as to race,
12 creed, color, national origin, ancestry, marital status, civil union
13 status, domestic partnership status, sex, gender identity, or
14 expression, affectional or sexual orientation, familial status,
15 disability, nationality, or source of lawful income used for rental or
16 mortgage payments, or any intent to make any such limitation,
17 specification or discrimination, and the production of any such
18 statement, advertisement, publicity, sign, form of application,
19 record, or inquiry purporting to be made by any such person shall
20 be presumptive evidence in any action that the same was authorized
21 by such person; provided, however, that nothing contained in this
22 subsection shall be construed to bar any person from refusing to
23 sell, rent, lease, assign or sublease or from advertising or recording
24 a qualification as to sex for any room, apartment, flat in a dwelling
25 or residential facility which is planned exclusively for and occupied
26 by individuals of one sex to any individual of the exclusively
27 opposite sex on the basis of sex provided individuals shall be
28 qualified based on their gender identity or expression;

29 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
30 to deny to or withhold from any person or group of persons any real
31 property or part or portion thereof because of the source of any
32 lawful income received by the person or the source of any lawful
33 rent payment to be paid for the real property; or

34 (5) To refuse to rent or lease any real property to another person
35 because that person's family includes children under 18 years of
36 age, or to make an agreement, rental or lease of any real property
37 which provides that the agreement, rental or lease shall be rendered
38 null and void upon the birth of a child. This paragraph shall not
39 apply to housing for older persons as defined in subsection mm. of
40 section 5 of P.L.1945, c.169 (C.10:5-5).

41 h. For any person, including but not limited to, any real estate
42 broker, real estate salesperson, or employee or agent thereof:

43 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
44 sale, rental, lease, assignment, or sublease any real property or part
45 or portion thereof to any person or group of persons or to refuse to
46 negotiate for the sale, rental, lease, assignment, or sublease of any
47 real property or part or portion thereof to any person or group of
48 persons because of race, creed, color, national origin, ancestry,

1 marital status, civil union status, domestic partnership status,
2 familial status, sex, gender identity or expression, affectional or
3 sexual orientation, disability, nationality, or source of lawful
4 income used for rental or mortgage payments, or to represent that
5 any real property or portion thereof is not available for inspection,
6 sale, rental, lease, assignment, or sublease when in fact it is so
7 available, or otherwise to deny or withhold any real property or any
8 part or portion of facilities thereof to or from any person or group of
9 persons because of race, creed, color, national origin, ancestry,
10 marital status, civil union status, domestic partnership status,
11 familial status, sex, gender identity or expression, affectional or
12 sexual orientation, disability or nationality;

13 (2) To discriminate against any person because of race, creed,
14 color, national origin, ancestry, marital status, civil union status,
15 domestic partnership status, familial status, sex, gender identity or
16 expression, affectional or sexual orientation, disability, nationality,
17 or source of lawful income used for rental or mortgage payments in
18 the terms, conditions or privileges of the sale, rental, lease,
19 assignment or sublease of any real property or part or portion
20 thereof or in the furnishing of facilities or services in connection
21 therewith;

22 (3) To print, publish, circulate, issue, display, post, or mail, or
23 cause to be printed, published, circulated, issued, displayed, posted
24 or mailed any statement, advertisement, publication or sign, or to
25 use any form of application for the purchase, rental, lease,
26 assignment, or sublease of any real property or part or portion
27 thereof or to make any record or inquiry in connection with the
28 prospective purchase, rental, lease, assignment, or sublease of any
29 real property or part or portion thereof which expresses, directly or
30 indirectly, any limitation, specification or discrimination as to race,
31 creed, color, national origin, ancestry, marital status, civil union
32 status, domestic partnership status, familial status, sex, gender
33 identity or expression, affectional or sexual orientation, disability,
34 nationality, or source of lawful income used for rental or mortgage
35 payments or any intent to make any such limitation, specification or
36 discrimination, and the production of any such statement,
37 advertisement, publicity, sign, form of application, record, or
38 inquiry purporting to be made by any such person shall be
39 presumptive evidence in any action that the same was authorized by
40 such person; provided, however, that nothing contained in this
41 subsection h., shall be construed to bar any person from refusing to
42 sell, rent, lease, assign or sublease or from advertising or recording
43 a qualification as to sex for any room, apartment, flat in a dwelling
44 or residential facility which is planned exclusively for and occupied
45 exclusively by individuals of one sex to any individual of the
46 opposite sex on the basis of sex, provided individuals shall be
47 qualified based on their gender identity or expression;

1 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
2 to deny to or withhold from any person or group of persons any real
3 property or part or portion thereof because of the source of any
4 lawful income received by the person or the source of any lawful
5 rent payment to be paid for the real property; or

6 (5) To refuse to rent or lease any real property to another person
7 because that person's family includes children under 18 years of
8 age, or to make an agreement, rental or lease of any real property
9 which provides that the agreement, rental or lease shall be rendered
10 null and void upon the birth of a child. This paragraph shall not
11 apply to housing for older persons as defined in subsection mm. of
12 section 5 of P.L.1945, c.169 (C.10:5-5).

13 i. For any person, bank, banking organization, mortgage
14 company, insurance company or other financial institution, lender
15 or credit institution involved in the making or purchasing of any
16 loan or extension of credit, for whatever purpose, whether secured
17 by residential real estate or not, including but not limited to
18 financial assistance for the purchase, acquisition, construction,
19 rehabilitation, repair or maintenance of any real property or part or
20 portion thereof or any agent or employee thereof:

21 (1) To discriminate against any person or group of persons
22 because of race, creed, color, national origin, ancestry, marital
23 status, civil union status, domestic partnership status, sex, gender
24 identity or expression, affectional or sexual orientation, disability,
25 familial status or nationality, in the granting, withholding,
26 extending, modifying, renewing, or purchasing, or in the fixing of
27 the rates, terms, conditions or provisions of any such loan,
28 extension of credit or financial assistance or purchase thereof or in
29 the extension of services in connection therewith;

30 (2) To use any form of application for such loan, extension of
31 credit or financial assistance or to make record or inquiry in
32 connection with applications for any such loan, extension of credit
33 or financial assistance which expresses, directly or indirectly, any
34 limitation, specification or discrimination as to race, creed, color,
35 national origin, ancestry, marital status, civil union status, domestic
36 partnership status, sex, gender identity or expression, affectional or
37 sexual orientation, disability, familial status or nationality or any
38 intent to make any such limitation, specification or discrimination;
39 unless otherwise required by law or regulation to retain or use such
40 information;

41 (3) (Deleted by amendment, P.L.2003, c.180).

42 (4) To discriminate against any person or group of persons
43 because of the source of any lawful income received by the person
44 or the source of any lawful rent payment to be paid for the real
45 property; or

46 (5) To discriminate against any person or group of persons
47 because that person's family includes children under 18 years of
48 age, or to make an agreement or mortgage which provides that the

1 agreement or mortgage shall be rendered null and void upon the
2 birth of a child. This paragraph shall not apply to housing for older
3 persons as defined in subsection mm. of section 5 of P.L.1945,
4 c.169 (C.10:5-5).

5 j. For any person whose activities are included within the
6 scope of this act to refuse to post or display such notices concerning
7 the rights or responsibilities of persons affected by this act as the
8 Attorney General may by regulation require.

9 k. For any real estate broker, real estate salesperson or
10 employee or agent thereof or any other individual, corporation,
11 partnership, or organization, for the purpose of inducing a
12 transaction for the sale or rental of real property from which
13 transaction such person or any of its members may benefit
14 financially, to represent that a change has occurred or will or may
15 occur in the composition with respect to race, creed, color, national
16 origin, ancestry, marital status, civil union status, domestic
17 partnership status, familial status, sex, gender identity or
18 expression, affectional or sexual orientation, disability, nationality,
19 or source of lawful income used for rental or mortgage payments of
20 the owners or occupants in the block, neighborhood or area in
21 which the real property is located, and to represent, directly or
22 indirectly, that this change will or may result in undesirable
23 consequences in the block, neighborhood or area in which the real
24 property is located, including, but not limited to the lowering of
25 property values, an increase in criminal or anti-social behavior, or a
26 decline in the quality of schools or other facilities.

27 l. For any person to refuse to buy from, sell to, lease from or
28 to, license, contract with, or trade with, provide goods, services or
29 information to, or otherwise do business with any other person on
30 the basis of the race, creed, color, national origin, ancestry, age,
31 sex, gender identity or expression, affectional or sexual orientation,
32 marital status, civil union status, domestic partnership status,
33 liability for service in the Armed Forces of the United States,
34 disability, nationality, or source of lawful income used for rental or
35 mortgage payments of such other person or of such other person's
36 spouse, partners, members, stockholders, directors, officers,
37 managers, superintendents, agents, employees, business associates,
38 suppliers, or customers. This subsection shall not prohibit refusals
39 or other actions (1) pertaining to employee-employer collective
40 bargaining, labor disputes, or unfair labor practices, or (2) made or
41 taken in connection with a protest of unlawful discrimination or
42 unlawful employment practices.

43 m. For any person to:

44 (1) Grant or accept any letter of credit or other document which
45 evidences the transfer of funds or credit, or enter into any contract
46 for the exchange of goods or services, where the letter of credit,
47 contract, or other document contains any provisions requiring any
48 person to discriminate against or to certify that he, she or it has not

1 dealt with any other person on the basis of the race, creed, color,
2 national origin, ancestry, age, sex, gender identity or expression,
3 affectional or sexual orientation, marital status, civil union status,
4 domestic partnership status, disability, liability for service in the
5 Armed Forces of the United States, or nationality of such other
6 person or of such other person's spouse, partners, members,
7 stockholders, directors, officers, managers, superintendents, agents,
8 employees, business associates, suppliers, or customers.

9 (2) Refuse to grant or accept any letter of credit or other
10 document which evidences the transfer of funds or credit, or refuse
11 to enter into any contract for the exchange of goods or services, on
12 the ground that it does not contain such a discriminatory provision
13 or certification.

14 The provisions of this subsection shall not apply to any letter of
15 credit, contract, or other document which contains any provision
16 pertaining to employee-employer collective bargaining, a labor
17 dispute or an unfair labor practice, or made in connection with the
18 protest of unlawful discrimination or an unlawful employment
19 practice, if the other provisions of such letter of credit, contract, or
20 other document do not otherwise violate the provisions of this
21 subsection.

22 n. For any person to aid, abet, incite, compel, coerce, or induce
23 the doing of any act forbidden by subsections l. and m. of section
24 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
25 do so. Such prohibited conduct shall include, but not be limited to:

26 (1) Buying from, selling to, leasing from or to, licensing,
27 contracting with, trading with, providing goods, services, or
28 information to, or otherwise doing business with any person
29 because that person does, or agrees or attempts to do, any such act
30 or any act prohibited by this subsection; or

31 (2) Boycotting, commercially blacklisting or refusing to buy
32 from, sell to, lease from or to, license, contract with, provide goods,
33 services or information to, or otherwise do business with any person
34 because that person has not done or refuses to do any such act or
35 any act prohibited by this subsection; provided that this subsection
36 shall not prohibit refusals or other actions either pertaining to
37 employee-employer collective bargaining, labor disputes, or unfair
38 labor practices, or made or taken in connection with a protest of
39 unlawful discrimination or unlawful employment practices.

40 o. For any multiple listing service, real estate brokers'
41 organization or other service, organization or facility related to the
42 business of selling or renting dwellings to deny any person access
43 to or membership or participation in such organization, or to
44 discriminate against such person in the terms or conditions of such
45 access, membership, or participation, on account of race, creed,
46 color, national origin, ancestry, age, marital status, civil union
47 status, domestic partnership status, familial status, sex, gender

1 identity or expression, affectional or sexual orientation, disability or
2 nationality.

3 p. Nothing in the provisions of this section shall affect the
4 ability of an employer to require employees to adhere to reasonable
5 workplace appearance, grooming and dress standards not precluded
6 by other provisions of State or federal law, except that an employer
7 shall allow an employee to appear, groom and dress consistent with
8 the employee's gender identity or expression.

9 q. (1) For any employer to impose upon a person as a condition
10 of obtaining or retaining employment, including opportunities for
11 promotion, advancement or transfers, any terms or conditions that
12 would require a person to violate or forego a sincerely held
13 religious practice or religious observance, including but not limited
14 to the observance of any particular day or days or any portion
15 thereof as a Sabbath or other holy day in accordance with the
16 requirements of the religion or religious belief, unless, after
17 engaging in a bona fide effort, the employer demonstrates that it is
18 unable to reasonably accommodate the employee's religious
19 observance or practice without undue hardship on the conduct of the
20 employer's business. Notwithstanding any other provision of law to
21 the contrary, an employee shall not be entitled to premium wages or
22 premium benefits for work performed during hours to which those
23 premium wages or premium benefits would ordinarily be
24 applicable, if the employee is working during those hours only as an
25 accommodation to his religious requirements. Nothing in this
26 subsection q. shall be construed as reducing:

27 (a) The number of the hours worked by the employee which are
28 counted towards the accruing of seniority, pension or other benefits;
29 or

30 (b) Any premium wages or benefits provided to an employee
31 pursuant to a collective bargaining agreement.

32 (2) For an employer to refuse to permit an employee to utilize
33 leave, as provided for in this subsection q., which is solely used to
34 accommodate the employee's sincerely held religious observance or
35 practice. Except where it would cause an employer to incur an
36 undue hardship, no person shall be required to remain at his place
37 of employment during any day or days or portion thereof that, as a
38 requirement of his religion, he observes as his Sabbath or other holy
39 day, including a reasonable time prior and subsequent thereto for
40 travel between his place of employment and his home; provided that
41 any such absence from work shall, wherever practicable in the
42 reasonable judgment of the employer, be made up by an equivalent
43 amount of time and work at some other mutually convenient time,
44 or shall be charged against any leave with pay ordinarily granted,
45 other than sick leave, and any such absence not so made up or
46 charged, may be treated by the employer of that person as leave
47 taken without pay.

1 (3) (a) For purposes of this subsection q., "undue hardship"
2 means an accommodation requiring unreasonable expense or
3 difficulty, unreasonable interference with the safe or efficient
4 operation of the workplace or a violation of a bona fide seniority
5 system or a violation of any provision of a bona fide collective
6 bargaining agreement.

7 (b) In determining whether the accommodation constitutes an
8 undue hardship, the factors considered shall include:

9 (i) The identifiable cost of the accommodation, including the
10 costs of loss of productivity and of retaining or hiring employees or
11 transferring employees from one facility to another, in relation to
12 the size and operating cost of the employer.

13 (ii) The number of individuals who will need the particular
14 accommodation for a sincerely held religious observance or
15 practice.

16 (iii) For an employer with multiple facilities, the degree to which
17 the geographic separateness or administrative or fiscal relationship
18 of the facilities will make the accommodation more difficult or
19 expensive.

20 (c) An accommodation shall be considered to constitute an undue
21 hardship if it will result in the inability of an employee to perform
22 the essential functions of the position in which he or she is
23 employed.

24 (d) (i) The provisions of this subsection q. shall be applicable
25 only to reasonable accommodations of religious observances and
26 shall not supersede any definition of undue hardship or standards
27 for reasonable accommodation of the disabilities of employees.

28 (ii) This subsection q. shall not apply where the uniform
29 application of terms and conditions of attendance to employees is
30 essential to prevent undue hardship to the employer. The burden of
31 proof regarding the applicability of this subparagraph (d) shall be
32 upon the employer.

33 (cf: P.L.2007, c.325, s.2)

34
35 2. (New section) An employer, including the State and any
36 political subdivision, shall provide reasonable break time each day
37 to an employee, as needed, for the employee to express breast milk
38 for her infant child. An employer is not required to provide break
39 time under this section if to do so would unduly disrupt the
40 employer's operations.

41
42 3. (New section) An employer shall make reasonable efforts to
43 provide a room or other location, in close proximity to the work
44 area, other than a toilet stall, where the employee can express her
45 milk in privacy. The room or location may include the place where
46 the employee normally works if it otherwise meets the requirements
47 of this section.

